

Decision 05-05-030 May 26, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Communication Impact Inc. for a certificate of public convenience and necessity to provide interLATA and intraLATA interexchange services and competitive local exchange services as a reseller.

Application 04-10-012
(Filed October 12, 2004)

**OPINION GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

I. Summary

Communication Impact Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide resold local exchange and interexchange telecommunications services as a competitive local carrier (CLC).¹ By this decision, we grant the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions, we authorized the provision of competitive local exchange service within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), SureWest Telephone (SureWest),² and Citizens Telecommunications Company of California, Inc. (CTC).

¹ A CLC is a common carrier that is issued a CPCN to provide local exchange telecommunications service for a geographic area specified by such carrier.

² SureWest was previously known as Roseville Telephone Company.

Applicant, a California corporation, requests authority to operate as a provider of resold interexchange and local exchange services within Pacific's, Verizon's, SureWest's, and CTC's service territories, using facilities and services furnished by other authorized carriers.

Applicant's principal place of business is located at Chico, California.

III. Financial Qualifications

To be granted a CPCN for authority to provide resold local exchange service and/or resold interexchange services, an applicant must demonstrate that it has \$25,000 cash or cash equivalent to meet the firm's start-up expenses. The applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by other telecommunications carriers in order to provide service in California.³ Applicant provided financial documentation that demonstrates that it meets the financial requirements. Applicant states that it is not required to provide deposits to other telecommunications carriers in order to provide the proposed service.

IV. Technical Qualifications

To be granted a CPCN for authority to provide local exchange service, an applicant must make a reasonable showing of technical expertise in telecommunications or a related business. Applicant supplied biographical information on its management that demonstrates that it has sufficient expertise and training to operate as a telecommunications provider.

³ The financial standards for certification to operate as a CLC are set forth in Decision (D.) 95-12-056, Appendix C, Rule 4.B.

Applicant represents that no one associated with or employed by Applicant as an affiliate, officer, director, partner, or owner of more than 10% of Applicant was previously associated with a telecommunications carrier that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule, or order.

Applicant previously held a CPCN (U-6542-C) to provide resold telecommunications services in California. The Commission, in error, revoked this CPCN in 2003 pursuant to Resolution T-16753 based on Applicant's failure to file surcharge reports. Applicant states that it did, in fact, inform the Commission by letter stating that it had no local service revenues in California, in 2002 and 2003. The Commission Telecommunication Division has checked its files and found that the company is now in compliance with the applicable requirements. In view of these circumstances, and the fact that Applicant meets all other requirements for issuance of a CPCN, we do not believe that the previous revocation of Applicant's authority to provide resold telecommunications services should bar approval of this application.

V. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. In its compliance tariff filing, Applicant is directed to correct these deficiencies as a condition of our granting approval of its tariffs.

VI. California Environmental Quality Act (CEQA)

The CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse

effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. Since Applicant states that it will not be constructing any facilities for the purpose of providing local exchange services, it can be seen with certainty that there is no possibility that granting this application will have an adverse impact upon the environment. Applicant must file for additional authority, and submit to any necessary CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures.

VII. Conclusion

We conclude that the application conforms to our rules for certification as a CLC. Accordingly, we shall grant Applicant a CPCN to provide local exchange and interexchange telecommunications services, subject to compliance with the terms and conditions set forth herein.

VIII. Categorization and Need for Hearings

In Resolution ALJ 176-3141 dated October 28, 2004, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

IX. Comments on Draft Decision

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

X. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. A notice of the filing of the application appeared in the Daily Calendar on October 29, 2004.
2. There were no protests to this application.
3. A hearing is not required.
4. In prior decisions, the Commission authorized competition in providing local exchange telecommunications services within the service territories of Pacific, Verizon, SureWest, and CTC.
5. Applicant has a minimum of \$25,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.
6. Applicant states that deposits are not required by other telecommunications carriers in order to provide the proposed service.
7. Applicant's management possesses sufficient experience and knowledge to provide local exchange services to the public.
8. Applicant previously held a CPCN to provide resold telecommunications services, which was revoked by the Commission in 2003 pursuant to Resolution T-16753 based on Applicant's failure to file required surcharge reports.
9. Applicant responds it did file a report stating that it had zero local service revenues in California for 2002 and 2003.
10. The Commission staff have reviewed this matter and find that Applicant did file a report and is now in compliance with all applicable requirements.
11. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision.

Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.

12. Applicant does not propose to construct any facilities.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in, or related to, telecommunications.
3. Under the circumstances of this case, the previous revocation of Applicant's CPCN to provide resold telecommunications services should not bar approval of this application.
4. Public convenience and necessity require the competitive local exchange services to be offered by Applicant, subject to the terms and conditions set forth herein.
5. The application should be granted to the extent set forth below.
6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.
7. Applicant's initial tariff filing should correct the deficiencies noted in its draft tariffs as indicated in Attachment A to this decision.
8. Since Applicant does not propose to construct any facilities, it can be seen with certainty that granting it authority to provide local exchange services will not have a significant adverse effect upon the environment.
9. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to Communication Impact Inc. to provide resold interexchange service and resold local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc., subject to the terms and conditions set forth below.
2. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall correct the deficiencies noted in Attachment A. The tariff shall be effective not less than one day after approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.
3. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.
4. The corporate identification number assigned to Applicant, U-6949-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.
5. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/ Investigation 95-04-044), as well as all other applicable Commission rules,

decisions, GOs and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

6. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

7. Applicant is not authorized to construct facilities.

8. Application 04-10-012 is closed.

This order is effective today.

Dated May 26, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

ATTACHMENT A

List of deficiencies in tariffs filed by Communication Impact, Inc in A.04-10-012 to be corrected in its tariff compliance filing.

1. Sheet 48: Each rule must begin on a separate page. Please modify rules 20, 21 and 22 in your tariff accordingly.
2. Please add a description and rule for Demarcation Points. Companies must have a demarcation tariff or concur in another company's tariff.
3. Please add a description and rule for Caller ID – CPNI Restrictions.
4. Please add information on the availability of directories.
5. Sheet 31, Rule 14: Your Company limits its liability to \$10,000 but does not discuss court costs or attorneys fees that may be applicable. Please add, “The non-prevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court”.
6. Sheet 49, Taxes and Surcharges: Your tariff must be in accordance with Resolution T-16901 and state concurrence with SBC California tariffs

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS AND NON-DOMINANT INTEREXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.
2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to Decision (D.) 00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.
 - a. The current 1.55% surcharge applicable to all intrastate services except or those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16917), dated February 24, 2005, effective April 1, 2005);
 - b. The current 0.30% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16816, dated January 22, 2004, effective February 1, 2004);
 - c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4813);
 - d. The current 0.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-16916, dated February 24, 2005, effective April 1, 2005);

- e. The current 2.43% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16898, dated December 16, 2004, effective January 1, 2005); and
- f. The current 0.16% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16833, dated July 8, 2004, effective August 1, 2004).

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of D.95-12-056:

“E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

- “(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- “(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- “(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.

- “(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- “(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.”
- “(6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- “(7) CLCs shall file tariffs in accordance with PU Code § 876.”

4. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in #2 above.

5. Applicant shall file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant shall provide the Commission’s Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

7. Applicant shall notify the Director of the Telecommunications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

8. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

9. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

10. Applicant shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

11. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with D.93-02-019, on a calendar year basis using the form contained in Attachment D.

12. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

13. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

14. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in #2 above, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

15. Applicant is exempt from General Order 96-A, subsections III.G(1) and (2), and Commission Rule of Practice and Procedure 18(b).

16. Applicant is exempt from Pub. Util. Code §§ 816-830.

17. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

18. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Telecommunications Division's Bankruptcy Coordinator.

19. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C ANNUAL REPORT

An original hard copy, and a machine-readable electronic copy, on a CD or floppy disk using Microsoft Word or a compatible format, shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298. The filing shall be made no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. The number and date of the Commission decision granting the Utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D
CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as “controlling corporations” of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)